

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

EDSEL RAY HILL,)
)
Petitioner,)
)
vs.) Case No. CIV-04-1728-F
)
WARDEN MIKE ADDISON,)
)
Respondent.)

ORDER

On May 2, 2005, petitioner filed his Notice of Appeal (docket entry no. 13), indicating his intent to appeal from this court's order, entered on April 27, 2005 (docket entry no. 11), dismissing his 28 U.S.C. § 2254 petition for a writ of habeas corpus as untimely under 28 U.S.C. § 2244(d)(1). The court also entered judgment on April 27, 2005 (docket entry no. 12).

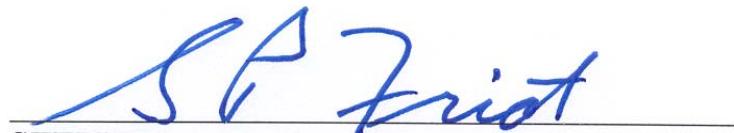
Pursuant to 28 U.S.C. § 2253, as amended by § 102 of the Antiterrorism and Effective Death Penalty Act of 1996, a petitioner is required to obtain a certificate of appealability before appealing a final order in a habeas corpus proceeding. Section 2253(c) instructs that the court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right," and the court "indicates which specific issue or issues satisfy [that] showing." A petitioner can satisfy that standard by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. Slack v. McDaniel, 529 U.S. 473, 484 (2000) (citing Barefoot

v. Estelle, 463 U.S. 880, 893 (1983)). Because the court's ruling in the instant case was based on procedural grounds, the petitioner must demonstrate that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 529 U.S. at 484. After considering the record in this case, the court concludes that a certificate of appealability should not issue as the petitioner has failed to satisfy the second prong of the required showing, i.e., the court's ruling that petitioner's petition should be dismissed as untimely under 28 U.S.C. § 2244(d)(1) is debatable or incorrect. A certificate of appealability should be denied.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. A certificate of appealability is **DENIED**.
2. The clerk is directed to send a copy of this order to the Tenth Circuit Court of Appeals.

ENTERED this 4th day of May, 2005.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE